

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:98-CR-00037-F-12

UNITED STATES OF AMERICA

v.

TIVARUS MONTIENTO McRAE,
Defendant.

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ORDER

This matter is before the court on Tivarus Montiento McRae's March 4, 2016 letter motion addressed to the undersigned [DE-939]. In his letter motion, McRae raises questions about the validity of his sentence.

McRae is attacking the validity of his sentence; thus, the court will treat McRae's letter motion as a motion brought pursuant to 28 U.S.C. § 2255. *See United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003) (holding that "a motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application.") McRae previously filed a § 2255 motion that was addressed on the merits. *See* May 7, 2007 Order [DE-613]. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." McRae has not provided any evidence that he has secured authorization from the Fourth Circuit Court of Appeals to file a successive § 2255, so this court is without jurisdiction to consider the merits of the present successive § 2255 motion.

In light of the foregoing, McRae's March 4, 2016 letter motion [DE-939] is DISMISSED.

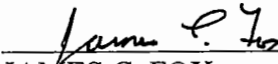
A certificate of appealability will not issue absent "a substantial showing of the denial of

a constitutional right.” 28 U.S.C. § 2253(c)(2). When the court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the court’s assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). However, when a court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

The court finds that McRae has not made the requisite showing to support a certificate of appealability. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This, the 8 day of March, 2016.



JAMES C. FOX
Senior United States District Judge